

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

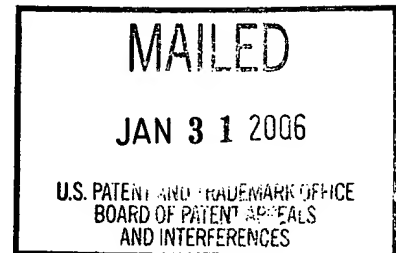
UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte SCOTT C. HARRIS

Appeal No. 2005-2425
Application No. 09/514,053

HEARD: January 12, 2006



Before KRASS, DIXON, and BARRY, Administrative Patent Judges.
KRASS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the final rejection of claims 2, 3, 5, and 8-18.

The invention pertains to setting travel plans over a network, such as the Internet, using a graphical user interface (GUI).

Representative independent claim 8 is reproduced as follows:

8. A system comprising:

a server computer having travel information;

a client computer, having a cursor moving element, and an actuator that is actuated to select a current position of said cursor moving element, said client computer connected to said server computer over a network, and running a server interfacing program, which exchanges information with said server, said server interfacing program operating to produce a graphical user interface that includes a hyperlinked image, that allows entry of a desired starting area for travel, and a desired ending area for said travel by selecting a link on the hyperlinked image, said graphical user interface displaying a map of an area within which the travel will occur, and allowing said starting area for said travel to be selected within said area by using said cursor moving element to place a cursor of the graphical user interface over said starting area selecting a first link on the hyperlinked image, and actuating said actuator to select said starting area, and allowing said ending area for said travel to be selected by using said cursor moving element to place the cursor of the graphical user interface over said ending area, and actuating the actuator to indicate said ending area by selecting a second link on said hyperlinked image, said server interfacing program receiving said starting area, and said ending area, sending first travel information about both said starting area and said ending area to said server, and receiving travel information from said server indicative of travel options between the selected starting area and ending area;

wherein said client computer displays information about a selected trip from said starting area to said ending area, including information about how much the trip deviates compared with an optimum route from said starting area to said ending area.

The examiner relies on the following references:

DeLorme et al. (DeLorme)	5,948,040	Sep. 07, 1999
Sehr	6,085,976	Jul. 11, 2000 (filed May 22, 1998)
Iyengar et al. (Iyengar)	6,360,205	Mar. 19, 2002 (filed Mar. 05, 1999)
Smith et al. (Smith)	6,578,078	Jun. 10, 2003 (filed Apr. 02, 1999)
Malamud et al. (Malamud)	6,606,101	Aug. 12, 2003 (filed Jan. 21, 1999)

In addition, the examiner relies on "Official notice" regarding the use of cursors, or special on-screen indicators, with a mouse or other on-screen icons that move with movements of the mouse and actuators.

Claims 2, 3, 5, and 8-18 stand rejected under 35 U.S.C. § 103. As evidence of obviousness, the examiner offers DeLorme and Smith with regard to claims 8, 9, 12, 15, and 16, adding Iyengar thereto with regard to claims 14 and 18. With regard to claims 2, 3, 5, and 10, the examiner relies on DeLorme and "Official notice." Moreover, the examiner offers DeLorme, Smith, and Malamud with regard to claim 13 and DeLorme, Smith, and Sehr with regard to claims 11 and 17.

Reference is made to the brief and answer for the respective positions of appellant and the examiner.

OPINION

In rejecting claims under 35 U.S.C. § 103, the examiner bears the initial burden of presenting a prima facie case of obviousness. See In re Rijckaert, 9 F.3d 1531, 1532, 28 USPQ2d 1955, 1956 (Fed. Cir. 1993). To reach a conclusion of obviousness under §103, the examiner must produce a factual basis supported by a teaching in a prior art reference or shown to be common knowledge of unquestionable demonstration. Our reviewing court requires this evidence in order to establish a prima facie case. In re Piasecki, 745 F.2d 1468, 1471-72, 223 USPQ 785, 787-88 (Fed. Cir. 1984). The examiner may satisfy his/her burden only by showing some objective teaching in the prior art or that knowledge generally available to one of ordinary skill in the art would lead the individual to combine the relevant teachings of the references. In re Fine, 837 F.2d 1071, 1074, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988).

Turning first to the rejection of independent claim 8, the examiner contends that DeLorme teaches a travel reservation information planning system (TRIPS) wherein users (Figure 1A, 100) use a desktop computer (105) with at least one computer

communication connection or modem link (107) and one or more private or public computer networks, e.g., the Internet, for interactive communication with one or more third-party providers of diverse travel information, reservation, accommodation, transportation, ticketing and/or other travel-related goods/services. The examiner refers to column 13, lines 48-58 of the patent.

The examiner refers to column 8, lines 33-39, of DeLorme for a teaching of TRIPS software allowing a user to construct travel plans using electronic maps presented on a computer display, wherein a user selects the travel origin, travel destination and desired waypoints, and allowing a display of a travel route between the travel origin and travel destination via the selected waypoints.

The examiner cites column 23, line 64 to column 24, line 13, of DeLorme as evidence that the TRIPS technology is not restricted to what is shown in Figure 1C but also includes input means such as voice recognition, natural language, text queries, keystroke or mouse input, virtual reality input/output devices, etc. The examiner also points out that, at column 29, lines 9-31, of DeLorme, it is taught that a user may propose an initial departure point and a final destination point and one or more

optimal routes are computed therefrom according to selected parameters, such as quickest, shortest, scenic, etc.

The examiner also relies on column 30, lines 18-23, of DeLorme for a teaching of comparing costs and availability of alternate modes of transportation. The examiner then states that he "considers comparing cost (information) equivalent to how much the trip deviates when comparing the optimum route...from starting and ending area" (answer-page 4).

The examiner does admit that DeLorme fails to explicitly teach "selecting a hyperlink images including a cursor and actuator that is actuated to select a beginning and end point for travel" (answer-page 4), but contends that Smith's teaching of a method for preserving referential integrity within a website where hyperlinks are associated with picture icons and text block pairs and, once activated by click, the icon detailed information regarding the particular icons is displayed to the user (referring to column 10, line 25 to column 11, line 13) would have suggested to the artisan to include hyperlinks associated with picture icons and text block pairs within the TRIPS system of DeLorme because this would have addressed the problem of broken hyperlinks to resources that have been moved (referring to Smith, column 7, lines 61-64).

It is appellant's contention that the applied prior art does not teach the claimed limitation of displaying information about how much the trip deviates compared with an optimum route from the starting to the ending area. Appellant further contends that the examiner's consideration of comparing costs to be equivalent to how much a trip deviates from an optimum route is erroneous because this interpretation does not attribute a reasonable meaning to the claim language.

Appellant further contends that Smith does not supply the deficiencies admitted by the examiner to be missing from DeLorme. That is, appellant argues that while Smith does show icons for different areas, and does describe hyperlinks to travel agency sites, "Smith teaches nothing about the specific claimed subject matter in which the user selects a link on the hyperlink image for 'a desired starting area for said travel' and selects a link on the hyperlink image for 'a desired ending area for said travel'." (Brief-page 6). If combined with DeLorme, according to appellant, all this would do is "to add a Smith type system in which hyperlinks allow calling up of different specialized travel pages, e.g., a different page for Alaska, a different page for Caribbean...Nowhere is there any teaching or suggestion of selecting both the starting area for travel and the ending area

for travel from a hyperlinked image, as claimed" (Brief-pages 6-7).

We have carefully considered the evidence before us, including the applied references and the arguments of appellant and the examiner, and we agree with appellant that the subject matter of instant claims 8 and 9 would not have been obvious, within the meaning of 35 U.S.C. §103, over DeLorme and Smith.

Claims 8 and 9 clearly require that there is displayed on the client computer display information about how much the trip "deviates compared with an optimum route from said starting area to said ending area. We agree with appellant that it is unreasonable to interpret this as encompassing a comparison of "costs" of a trip. The claim language, consistent with the description within the specification, is clearly calling for comparison of "routes." Note that the claim language recites that the deviation is compared with "an optimum route" (emphasis ours). It does not recite the comparison of the costs of taking alternate routes; rather, it is the routes themselves which are being compared.

Since neither DeLorme nor Smith suggests a comparison of an optimum route and a deviation from such an optimum route, and a display of information regarding said deviation, the subject matter of claims 8 and 9 cannot be found obvious over these references, within the meaning of 35 U.S.C. §103. Therefore, we

will not sustain the rejection of these claims under 35 U.S.C.
§ 103.

Regarding independent claim 12, this claim does not recite the "deviation" limitation of independent claim 8. But claim 12 does require the display of hyperlinked images for a plurality of airports, the airports forming beginning and end points of a trip, wherein a movable element at the client computer is movable over the hyperlinked images, the movable element is actuated to select an area of the hyperlinked image, and the movable element permits selection of an area as a begin and/or endpoint of the trip. Thus, a cursor, or some movable element, must be capable of being moved over hyperlinked images, and actuation of the cursor, or movable element, over those hyperlinked images, selects an area as a begin and/or end point.

The examiner admits that DeLorme lacks this teaching (answer-page 4), but relies on Smith for associating hyperlinks with picture icons and actuating an element for selecting an icon.

While Smith may be said to teach this, we agree with appellant that "Smith teaches nothing about the specific claimed subject matter in which the user selects a link on the hyperlink image for 'a desired starting area for said travel' and selects a link on the hyperlink image for 'a desired ending area for said

travel'." (Brief-page 6). Since Smith does not appear to use hyperlinks and movable elements actuated so as to select either starting or ending points of travel, there would appear to be nothing taught therein that would have led the artisan to modify any teaching in DeLorme so as to select start and end points of a travel route by actuating a movable element over a hyperlink.

Accordingly, we also will not sustain the rejection of claims 12, 15, and 16 under 35 U.S.C. § 103.

Iyengar was added to the above applied references in order to reject dependent claims 14 and 18, but since Iyengar fails to provide for the deficiencies noted supra and claims 14 and 18 depend from independent claim 12, we also will not sustain the rejection of claims 14 and 18 under 35 U.S.C. § 103.

Similarly, Malamud was added to the original combination of DeLorme and Smith for allegedly providing for the extra limitations of claim 13 and Sehr was added for allegedly providing for the extra limitations of claims 11 and 17, but since neither Malamud nor Sehr provides for the deficiencies noted supra, and claims 13 and 17 are dependent from independent claim 12, while claim 11 is dependent from independent claim 8, we also will not sustain the rejection of claims 11, 13, and 17 under 35 U.S.C. §103.

Turning now to the rejection of independent claim 2, the examiner relies on DeLorme, once again, but now combines DeLorme with "Official notice" that it is

well known in the computer field to that graphical user interface such a cursor, which is special on-screen indicator used with applications and operating systems such as a mouse or other on-screen icons that move with movements of the mouse and actuators, which are disk drive mechanism for moving the read/write heads to location of the desired track on a disk are old and well established [sic] (answer-page 10).

The examiner then contends that since DeLorme teaches the use of electronic maps delineated to display a travel route between an origin and a destination via selected waypoints, and also teaches a button used to pan/zoom in on the selected travel route by the user, it would have been obvious

to include a cursor to select a starting and ending point of the selected travel route within the Travel Reservation Information Planning System as taught by DeLorme...with motivation of decreasing the amount of keystroke entries by the user, thereby providing a more efficient and effective way of selecting a desired travel route (answer-pages 10-11).

It is clear from appellant's argument, at pages 10-12 of the Brief, that appellant challenges the examiner's taking of "Official notice" since appellant argues that "nowhere has there

ever been teaching or suggestion that a cursor should be used to select a beginning and end of a trip from a graphical user interface that displays a map of the area within which the travel will occur as claimed" (Brief-page 11).

It is reversible error when an examiner judicially notices a feature as being old in the art and such is challenged and the examiner fails to cite the well known thing on which he/she relies. Ex parte Nouel, 158 USPQ 237 (PTO Bd. Of App 1967).

The examiner's response to appellant's argument is to merely repeat, without a tender of evidence, that "it is well known in the computer field that using graphical user interface such as a cursor to move with movements of the mouse are old and well established in the art..." (answer-page 19).

We do not doubt, and appellant does not deny, that using a mouse to control a cursor on a computer screen was old and well known at the time of appellant's invention. However, the limitations of instant claim 2 require more than that. Claim 2 requires, inter alia, that a cursor should be used to select a beginning and end of a trip from a graphical user interface that displays a map of the area within which travel will occur. While this may, in fact, be old and well known, appellant has challenged the examiner's taking of Official notice on this point and the examiner was therefore put to his proof to establish, by

way of objective evidence, that what he alleges to be old and well known actually did exist prior to appellant's invention.

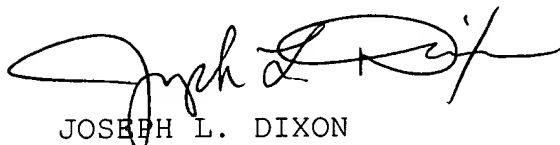
Deficiencies of a cited reference cannot be remedied by the examiner's general conclusions about what is "basic knowledge" or "common sense." In re Zurko, 258 F.3d 1379, 1385, 59 USPQ2d 1693, 1697 (Fed. Cir. 2001). Furthermore, the examiner's findings must extend to all material facts and must be documented on the record, lest the "haze of so-called expertise" acquire insulation from accountability. In re Lee, 277 F.3d 1338, 1345, 61 USPQ2d 1430, 1435 (Fed. Cir. 2002).

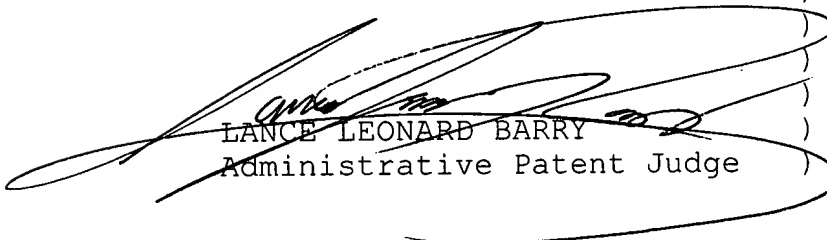
Since we have no evidence before us on which we can rely to agree with the examiner that the use of a cursor, as claimed, would have been obvious, we must reverse the rejection of claims 2, 3, 5, and 10 under 35 U.S.C. §103.

Since we have not sustained any of the rejections of claims 2, 3, 5, and 8-18 under 35 U.S.C. §103, the examiner's decision is reversed.

REVERSED


ERROL A. KRASS
Administrative Patent Judge)


JOSEPH L. DIXON
Administrative Patent Judge)
BOARD OF PATENT
APPEALS
AND
INTERFERENCES)


LANCE LEONARD BARRY
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